

Dear BHReview

I am happy for my responses to be published but please treat anonymously

1. Reasons for bullying, harassment, and sexual harassment

a. In your view, why is bullying, harassment and sexual harassment a persistent problem at the Bar?

Because the profession is by its nature hierarchical with power imbalances embedded right from the start; pupil/tenant, pupil/supervisor, junior tenant/senior tenant, junior counsel/judge, junior counsel/experience and important to chambers solicitor, leader/junior etc.

Further many of our professional sadly grew up and practised in a very different culture where bullying/harassment/sexual harassment was not taken seriously.

I am 20 years call and I don't remember in any part of my pupillage, bar training or early years of practice learning about or being told what to do if I was either subject to bullying/harassment/sexual harassment or I saw it take place.

Within my chambers - I think we have very good and clear measures in place and I do not think there is a significant problem.

As set out below - my concern is more for bullying/harassment of junior counsel by the judiciary - which I hope is within scope?.

b. Are there particular dynamics or working practices at the Bar which allow for bullying, harassment and sexual harassment to persist?

Yes. See above - the entrenched hierarchical structure of the profession and ongoing power imbalances.

I also think in the Criminal Courts, certain judges get away with what is bullying and harassment without any sanction at all. It is unfortunately too common to see Crown Court judges pick on counsel they perceive to be incompetent / or simply not doing the job as they would have done/did do. Junior counsel have no easy way of raising concerns, having them dealt with or listened to. Further - judges appear to have no form of monitoring or review of their conduct/behaviour towards counsel/court staff.

It is sadly not uncommon in court centres to have a specific judge who is feared by junior counsel, solicitor and even staff because of their rudeness, abrupt nature or unwanted demanded. An example is a well known circuit judge who unnecessarily and unreasonably imposes opening notes/written work on counsel he perceives as ill-prepared or sufficiently junior not to argue back. Most local and junior practitioners dare not do anything because 1)

how do they 2) they cannot avoid appearing in front of him and 3) no one would be confident in the resident judge of the court centre doing anything.

c. Are the relevant standards of behaviour relating to bullying, harassment and sexual harassment known, clear, accessible, and sufficiently robust?

For members of the bar -I think they are known and clear. Robust? See below

For judiciary - no sure they are robust enough.

For how members of the bar deal with concerns/complaints in respect of the conduct of more senior colleagues/judiciary - definitely not.

d. Are the relevant standards of behaviour relating to bullying, harassment and sexual harassment sufficiently mainstreamed within barristers' professional obligations? Should they, for example, be included within the Core Duties set out in the BSB Code of Conduct?

Should be included within Core Duties.

2. Impact of bullying, harassment, and sexual harassment

a. What is the impact of bullying, harassment and sexual harassment on those who are subject to such misconduct?

I cannot speak from personal experience but I have over the last few years been made aware of number of junior female counsel who have felt targeted by older most male judges who have been overly critical of their advocacy or given them an unnecessary hard time. This has had a significant impact on their confidence and ability to do their job without fear.

b. Is there a wider impact upon barristers' staff, clients (professional and law), or the justice system more broadly?

It is a significant factor impacting confidence and morale of some.

3. Reporting mechanisms, resources, and sanctions

a. What are the barriers to reporting incidents of bullying, harassment and sexual harassment?

Knowing how to. Confidence to do so. Being listened to. Fear of it impacting practice / career / your client if it arises during a case.

b. What mechanisms could be put in place to mitigate any repercussions against a complainant who has reported bullying, harassment or sexual harassment?

Anonymity.

Monitoring of judicial conduct and behaviour in terms of how they treat and respect counsel / staff and all court users.

Better education with practical example of duty we all have to report and call out such behaviour.

c. The Bar Standards Board (BSB) rules place a duty on barristers to report to the BSB in circumstances where there are reasonable grounds to believe there has been serious misconduct (with an exception set out in guidance for victims). Is this duty to report known, understood and implemented in practice?

I think it is known.

I'm not convinced it is sufficiently understood. It is not something I recall ever received any practical training upon. I don't think it is implemented in practice as it should be.

d. Is there sufficient support in place both for complainants and persons accused of bullying, harassment, or sexual harassment? Do the existing mechanisms appropriately balance the need for confidentiality and transparency?

No - more clearly needs to be done.

e. Should there be interim measures which permit a person accused of bullying, harassment, or sexual harassment to be subject to a precautionary exclusion from Chambers, their employer, or from practice during the adjudication of a complaint?

Any such measure would need to have robust and clear guidance and be subject to there being a real risk of repetition of harm or something similar if such measures were not in place. This should only be for exceptional places.

f. Are investigations into complaints (by the BSB, Chambers or any other relevant body) concerning bullying, harassment or sexual harassment sufficiently independent, prompt, robust, and fair?

Do not know - cannot answer.

g. Following an upheld complaint of bullying, harassment or sexual harassment, are the sanctions imposed appropriate and fair? Is enforcement action sufficiently robust to act as a deterrent?

Again - perception is that the judiciary receive little or no sanction.

For a barrister - enforcement action is a robust deterrent, especially if made public.

4. Potential reforms to tackle bullying, harassment, and sexual harassment

a. Are there any preventative steps which can be taken to tackle bullying, harassment, and sexual harassment? In particular, what could be done in the court room, in Chambers, and at the Bar more widely, to assist in preventing such misconduct?

Court room/judiciary- independent/anonymous monitoring of judges and listening to counsel.

Bar - better and more training for all practitioners

Chambers - review and monitoring of chambers policies and complaints mechanisms with bar council providing draft model policies/procedures and expectations.

b. What improvements could be made to existing reporting mechanisms and support services?

Regional working groups and anti-bullying harassment champions who meet regularly and who have identified members that people can report to anonymously.

c. In what ways could the judiciary, clerks, chambers professionals, and others work together with the Bar to bring about change?

See above

d. Are there any other comparable professions which can offer examples of best practice in tackling bullying, harassment, and sexual harassment?

The military appear to have put in significant measures to combat this - with reporting mechanisms outside and independent of the chain of command.

5. Is there anything else that you would like to share with the review?

No - thank you for taking the time to work on this.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]